

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

*In re* Reissue Application of Proctor

Reissue Application No. 09/773,303

Filed: 31 January 2001

For: U.S. Patent No. 5,894,079

Group Art Unit: 1638

Examiner: McElwain, Elizabeth F.

Confirmation No. 6243

*In re* Proctor Reexamination Proceeding

Control No. 90/005,892

Filed: December 20, 2000

For: U.S. Patent No. 5,894,079

Title: FIELD BEAN CULTIVAR NAMED ENOLA

Dated: October 14, 2005

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**DECLARATION OF LARRY M. PROCTOR**

1. My name is Larry M. Proctor. I reside at 2611 State Hwy 348, Delta, Colorado 81416. I am the sole named inventor on United States Patent No. 5,894,079 and am the President of Pod-Ners L.L.C., which owns that patent. I am the same Larry M. Proctor that signed Declarations in this matter on March 25, 2003 and June 2, 2004.
2. I was involved in the Munsell color test work that took place before my application was filed. I did not conduct the tests myself (I found that my associates were better at it than I was) but I watched often and was thoroughly familiar with the Munsell Book of Color and the test methods we were using.
3. We found that the seed coat color of most of my Enola beans fell on the 7.5Y page of the Munsell Book. In addition, most of the beans matched one of two

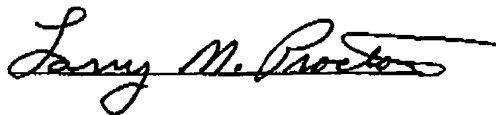
color sample squares on the 7.5Y page. These were the 8.5/4 and 8.5/6 squares, which were next to one another. However, the match was not always perfect because the two Munsell squares we identified were just two single colors and the beans were not always those exact colors but somewhere in between.

4. The same was true of the colors of other parts of the Enola bean and plant. The hilar ring of most beans matched one of two color sample squares on the 2.5Y page. These were the 9/4 and 9/6 squares, which were next to one another. However, the match was not always perfect because the two Munsell squares we identified were just two single colors and the beans were not always those exact colors but somewhere in between.
5. The word "about" in my patent claims was put there to deal with this issue and was based mainly on the statement in the patent specification (twice) that "Enola seed possesses a unique yellow color matching most closely to 7.5Y 8.5/4 to 7.5Y 8.5/6 in the Munsell Book of Color when viewed in natural light" (col.3, ll. 31-34; col. 1, l. 65 to col. 2, ll. 4 (includes hilar ring)). I discussed this with my patent attorney. I hoped that people would not be able to avoid my claims with beans that were not the two exact shade of the two squares we specified.
6. It was not my intention, nor is it now, to stretch "about" to mean that a bean matching some other color square would be "about" the color discussed in my claims. If other beans had, for example, a seed coat color of 7.5Y 8.5/8 or 7.5Y 8/6, they would not in my view be within my claimed range of "about 7.5Y 8.5/4 to about 7.5Y 8.5/6" (see claim 13 for example). If I had been able to claim the 8.5/2 or 8/6 squares, I would certainly have done it. But my Enola beans did not fall there for the most part.

**PATENT**  
Docket No.: 414634

7. The color squares adjacent to my two claimed squares are markedly different colors. An accurate photographic copy of the 7.5Y page is attached to this Declaration as Attachment 1.
8. I understand that the Patent Office is continuing to ask for information about the public use or sale in the United States of the bean seeds I brought back from Mexico in the early 90's. I can state, and have stated, without hesitation that I have given the Patent Office all the information I can find on this issue, including bean samples that were near impossible to get and stacks of information developed in a contentious litigation with an infringer of my Plant Variety Protection Certificate.
9. I should note that I did not start looking for beans just because and when the Patent Office asked for information. I have been looking for similar beans since I started my work with Enola in 1991, and that effort intensified when we began to get ready to file applications for a patent and a Plant Variety Protection Certificate. Our attorney told us that it was very important to tell the Patent Office about everything we knew about, and maybe to look for more if we thought it was out there.
9. I refer the Patent Office to my prior Declaration in this matter (June 2, 2004) and to what I said there under penalty of perjury: "To the best of my knowledge, the beans purchased in Mexico by me were not in public use or on sale in the United States prior to the filing of my patent application."
10. I make these statements under penalty of perjury.

October 14, 2005



Page 3 of 3

Declaration of Larry M. Proctor in Support of Response to Office Action  
mailed 14 April 2005 for U.S. Serial No. 09/773,303  
FIELD BEAN CULTIVAR NAMED ENOLA

## Attachment 1

# The Munsell Book of Color

## MATTE COLLECTION



Hue

7.5Y

9 /

8.5 /

8 /

7 /

6 /

5 /

4 /

3 /

2.5 /

/ 2    / 4    / 6    / 8    / 10    / 12    / 14  
 VALUE / CHROMA

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